

IN THE MATTER OF	:	BEFORE THE
Rose Hill Farm, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA 06-046V

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DECISION AND ORDER

On January 29, 2007, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Rose Hill Farm, LLC, Petitioner, for a variance to reduce the 50 foot Use and Set Back requirements from an external public road right of way to 10 feet for a future office building and parking garage to be located in a M-1 (Manufacturing: Light) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code.

I viewed the property as required by the Hearing Examiner Rules of Procedure.

Richard B. Talkin, Esquire, represented the Petitioner. Robert H. Vogle, Professional Engineer, testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. Subject Property:

The subject property, known as 7076 Washington Boulevard, is located in the 1st Election District on the northwest side of Washington Boulevard (US 1) approximately 700 feet northeast of Maryland Route 100 (the Property”). The Property is identified on Tax Map 37, Grid 24 as Parcels 189. The Property is an irregularly-shaped site, which was previously cleared and graded and used for outdoor storage purposes. A short paved driveway extends into the Property from a curve in the adjoining access road, through a broken chain link gate. Beyond the paved driveway, the Property is mostly a relatively level, stone/gravel surfaced area, and currently there are concrete traffic barriers and concrete pipes being stored on the site. In the north of the Property are a perennial stream and floodplain, and the elevation of the Property drops steeply down to this stream. At the US 1 frontage to the south, there is a relatively steep slope up to US 1

2. Vicinal properties:

The adjacent properties on the north side of US I are also zoned M- 1. To the west of the Property is Parcel 186 which is a vacant wooded parcel owned by the State Roads Commission, and an intermittent stream is located along the west side of the Property. The property to the north is Parcel 185 which is a wooded parcel owned by the Howard County Department of Recreation and Parks. Further to the north along the narrow access road there is a vacant, dilapidated frame single-family detached dwelling on the west side of the road, and an occupied brick single-family detached dwelling on the east side. Across the public access road to the east and

northeast of the Property is the bulk of Parcel 191, which is largely unimproved except for an outdoor sign located approximately 1,000 feet northeast of the Property. A small detached triangular portion of Parcel 191 adjoins the southeast side of the Property. To the east and southeast of the Property, across US 1, are existing developed properties zoned CE-CLI. Parcel F is the site of the Center for Social Change facility, and Parcel A-I is the site of an existing warehouse. To the southwest of the Property is the US 1 interchange with MD 100.

3. Roads:

US 1 in front of the Property has a wide, variable right of way that includes dual northbound and southbound lanes, a northbound exit lane from westbound MD 100, and a southbound exit lane onto westbound MD 100. The road onto which the Property has access is relatively narrow, and has a variable width pavement, with no posted speed limit.

The estimated sight distance from the current driveway entrance is over 500 feet to the northwest and approximately 190 feet to the northeast to the intersection with US 1. Precise sight distance measurements may only be determined through a detailed sight distance analysis, however. There appears to be no sight distance issue at the signalized intersection with US 1.

According to data from the State Highway Administration, the traffic volume on US 1 north of MD 100 was 33,125 ADT (average daily trips) as of 2003.

4. Water and Sewer Service:

The Property is in the Metropolitan District and is within the Existing Service Area according to the Howard County Geographic Information System maps.

The site will be served by public water and sewer facilities.

5. General Plan:

The Property is designated Residential Areas and Redevelopment Corridors on the Policies Map 2000-2020 of the 2000 General Plan. US 1 is depicted as an Intermediate Arterial on the Transportation Map 2000-2020 of the 2000 General Plan. The access road is a local road.

6. Testimony Supporting the Petition:

The witness testified that the Petitioner intends to develop the Property with two office buildings: a two-story, 8,000 square foot building in the northern area of the Property designated on the plan as a contractor's office building, and a three-story, 31,200 square foot general office building to be located in the southern area of the Property. Parking for the office uses would be both surface parking spaces and approximately 32 parking spaces to be located under the three-story building. An outdoor storage area would be located behind the contractor's office building, and the storm water management facility would be provided underground. Access to the Property would be from the existing road to the east of the site, with no direct access to US 1.

The Petitioner proposes to locate the three-story office building relatively close to the front lot line of the Property along the US 1 frontage, in order to "...support and implement the principles of the Route 1 plan." This front lot line is actually approximately 34 to 48 feet from the pavement of US 1, and is approximately 10 to 12 feet lower in elevation than US 1, down a relatively steep slope. In this proposed location, the building would encroach approximately 40 feet into the 50 foot setback

from the US 1 right-of-way, and the Petitioner requests a variance for this encroachment. As justification for this variance request, the Petitioner provided drawings and testimony that the physical character of the Property differs from the surrounding properties because of its shape, the topography, and the existence of environmentally sensitive conditions such as the 50 foot stream buffer along the northwestern and western border to the site which limit the developable area for permitted M-1 District uses. Testimony was presented as to possible modifications of the plan to accommodate requirements of the State Highway Administration, and for the possible small increase in the main building size and additional parking.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations. The irregular-shape of the Property combined with its topography relative to the higher elevation of the US 1 roadway, the perennial stream and floodplain on its north side with the required environmental buffers, and the intermittent stream on the west side with that required stream buffer, are unique physical conditions and existing features peculiar to the particular

lot; and that as a result of such unique physical conditions, unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare. In the present instance, the proposed development would be similar in character to the types of development intended along the US 1 Corridor based on the Route 1 Manual. The building would still be approximately 47 feet from the pavement of US 1 at the closest point, so there will be an adequate buffer and the encroachment will not be conspicuous. The encroachment area is well separated from the properties across US 1 by the width of that road. The adjacent properties on the same side of US 1 to the northeast and southwest are undeveloped and would not be affected by the encroachment. The requested variance will not alter the essential character of the neighborhood or district in which the property is located, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self created hardship. Since the Property was purchased in its current condition, the practical difficulties or hardships are not considered to have been created by the Petitioner.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief. The development would still have a 10 foot setback and a reasonably wide buffer area between the building and the US 1 travel lanes. Based on information provided in Department of Planning and Zoning's (DPZ) Technical Staff Report, the proposed development is not excessive for M-1 zoned properties. DPZ reported that the request is the minimum administrative adjustment necessary to afford relief to the Petitioner.

Based upon the foregoing Findings of Fact, and for the reasons stated above, I find that the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

ORDER

Based upon the foregoing, it is this ____ day of _____ 2007, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Rose Hill Farm, LLC, Petitioner, for variances to reduce the required the 50 foot setback from the US 1 right-of-way to 10 feet for a building to be located in a M-1 (Manufacturing: Light) Zoning District, filed pursuant to Section 130.B.2, is hereby **GRANTED**;

Provided, however, that the variance will apply only to the office building being requested and not any new structures on the subject property or to any additions thereto, and **subject to the following conditions**:

1. A site development plan for the proposed development passes the test for adequate road facilities in accordance with the Adequate Public Facilities Ordinance.

2. The appropriate building permits are obtained for construction.
3. The Petitioner is able to demonstrate to the State Highway Administration's (SHA) satisfaction that the variance will not adversely impact SHA's ability to widen the US 1 ramp to MD 100 in the future, maintain the proposed sidewalk and not adversely impact the property. This would not require further review by the Hearing Authority.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Ernest Stokes, Esq, LC

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.